

Rose Martha Chem.
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Unilateral Order.
not enforced.

Site:	Rose, Martha
ID #:	MOD 980633069
Break:	10.6
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5-23-86	

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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION VII
726 MINNESOTA AVENUE
KANSAS CITY, KANSAS 66101

IN THE MATTER OF:

MARTHA C. ROSE CHEMICALS, INC.
Kansas City and Holden, Missouri,

and

ENVIRONMENTAL TECHNOLOGY, INC.
North Tonawanda, New York,

and

AMERICAN STEEL WORKS, INC.
Kansas City and Holden, Missouri,

and

W.C. CAROLAN COMPANY, INC.
Kansas City and Holden, Missouri,

and

WALTER C. CAROLAN
Mission Hills, Kansas,

and

CITY OF HOLDEN, MISSOURI,

and

LEAR SIEGLER, INC.
Pasadena, California,

Respondents.

Proceedings Under Section 106
(a) of the Comprehensive
Environmental Response,
Compensation, and Liability
Act of 1980, 42 U.S.C. §9606
(a).

Docket No. 86-F-0006

ORDER



40024362
SUPERFUND RECORDS

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JURISDICTION

This Order is issued to Martha C. Rose Chemicals, Inc. (hereinafter Respondent Rose), Environmental Technology, Inc. (hereinafter Respondent ETI), American Steel Works, Inc. or Mo American Steel Works, Inc. (hereinafter Respondent American), W.C. Carolan Company, Inc. (hereinafter Respondent Carolan Company), Walter C. Carolan (hereinafter Respondent Carolan), the City of Holden, Missouri (hereinafter Respondent Holden) and Lear Siegler, Inc. (hereinafter Respondent Lear Siegler), pursuant to Section 106(a) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA), 42 U.S.C. §9606(a), by authority delegated to the undersigned official by the Administrator of the United States Environmental Protection Agency (EPA) by EPA Delegation Nos. 14-14-A and 14-14-B, dated April 16, 1984. Authority to issue this Order was delegated to the Administrator of EPA by Executive Order 12316 dated August 14, 1981, 46 Fed. Reg. 42237 et seq. (1981).

FINDINGS OF FACT

1. Respondent Rose, a Missouri Corporation, operated, from early 1982 until the present, a business primarily engaged in the brokerage of PCBs and PCB items, in the processing of PCB capacitors and transformers for disposal, and in the decontamination of mineral oil dielectric fluids contaminated with PCBs. The principal facility at which Respondent Rose

operated the aforementioned business is located at 500 W. McKissock, Holden, Missouri (hereinafter the Holden facility).

2. Respondent ETI, a Delaware Corporation, pursuant to a contractual agreement with Respondent Rose, is presently the operator of the Holden facility.

3. Respondent Holden owns the property, upon which Respondent Rose operates the aforementioned business, and leases the said property to Respondent Lear Siegler (a Delaware Corporation authorized to business in the State of Missouri) which subleases the said property to Respondent Carolan Company, a Missouri Corporation.

4. Respondent Rose pays rent on the said property to Respondent American, a Kansas Corporation authorized to do business in the State of Missouri.

5. Respondent Carolan owns 100% of the capital stock of Respondent Carolan Company and Respondent American and 51% of the capital stock of Respondent Rose. Respondent Carolan is also the chief executive officer and President of Respondents Rose, American and Carolan Company.

6. The work force of Respondent Rose are employees of Respondent American and received paychecks from Respondent Carolan Company and Respondent American.

7. Under authority of 40 C.F.R. §761.60(e), EPA-Region VII issued to Respondent Rose: (1) an approval,

effective March 15, 1983, to decontaminate mineral oil dielectric fluids contaminated with PCBs at concentrations equal to or less than 10,000 ppm (this approval expired March 15, 1986); (2) an approval, effective October 15, 1983, to process PCB capacitors for disposal; and (3) an approval, effective July 1, 1984, to process PCB transformers for disposal. A condition of each approval was that Respondent Rose comply with all Federal environmental requirements.

8. As a result of an inspection of Respondent Rose's facility in Holden, Missouri, on or about November 3 and 4, 1983, it was determined that Respondent Rose was in violation of the regulations in 40 C.F.R. Part 761, promulgated pursuant to Section 6(e) of TSCA, 15 U.S.C. §2605(e), to-wit: the storage and marking of PCBs and PCB items (40 C.F.R. §§761.65 and 761.40, respectively).

9. As a result of the inspection referred to in paragraph 8, preceding, EPA issued a Complaint and Notice of Opportunity for Hearing to Respondent Rose on March 26, 1984, seeking penalties for the aforementioned violations. Respondent Rose and EPA entered into a Consent Agreement and Final Order whereby Respondent Rose admitted the violations, agreed to pay a civil penalty, and agreed to comply with certain provisions of 40 C.F.R. Part 761.

10. As a result of an inspection of Respondent Rose's facility conducted by EPA on or about August 7-15, 1984, it was determined that Respondent Rose had failed to comply with the provisions of the Consent Agreement and Final Order referred to in paragraph 9, preceding, and was in violation of the regulations in 40 C.F.R. Part 761, promulgated pursuant to Section 6(e) of TSCA, 15 U.S.C. §2605(e), to-wit: the storage, marking and disposal of PCBs and inadequate recordkeeping regarding PCBs (40 C.F.R. §§761.65, 761.40, 761.60, and 761.180, respectively). Respondent Rose was also in violation of the conditions of each of the approvals specified in paragraph 7, above, in violation of 40 C.F.R. §761.60(e).

11. As a result of the inspection referred to in paragraph 10, preceding, EPA issued a Complaint and Notice of Opportunity for Hearing to Respondent Rose on February 25, 1985, seeking penalties for the aforementioned violations. On or about September 27, 1985, Respondent Rose and EPA entered into a Consent Agreement and Final Order whereby Respondent Rose agreed to pay a civil penalty and to come into compliance with the applicable PCB rules and regulations in 40 C.F.R. Part 761.

12. Subsequent inspections of Respondent Rose's facility by EPA on December 19, 1985, January 7 and March 17, 1986, revealed continuing and additional marking, storage, disposal and distribution in commerce violations of the PCB regulations, 40 C.F.R. Part 761.

13. As part of Respondent Rose's operations, scrap metal from the processing of PCB items is salvaged and sold. In December of 1985, EPA collected samples from scrap metal distributed in commerce by Respondent Rose to two separate businesses in Kansas City, Missouri. Analyses of five (5) copper strip samples and seven (7) swab samples indicated the presence of PCBs in concentrations ranging from 19 ug/100 cm² to 40,000 ug/100 cm². The said scrap metal had not been decontaminated by Respondent Rose in accordance with the requirements of condition #2 of both the transformer and capacitor processing for disposal approvals in violation of 40 C.F.R. §761.60(e). Respondent Rose was therefore also in violation of 40 C.F.R. §761.20(c) for distributing PCBs in commerce.

14. Investigations conducted by EPA and/or the Missouri Department of Natural Resources have indicated Respondent Rose allowed PCB contaminated water to be released into the Holden city sewer system. PCBs have been detected in fauna samples downstream from the Holden facility, in sludge drying beds at the Holden city sewage treatment plant downstream from Respondent Rose's Holden facility, and in branch and creek sediments downstream from the Holden facility.

15. Respondent Rose has, since approximately March 1, 1986, ceased active operations onsite. PCBs have remained onsite longer than allowed under 40 C.F.R. §761.65, thereby

demonstrating Respondent Rose's unwillingness or asserted inability to properly dispose of PCBs and PCB items in accordance with 40 C.F.R. Part 761 and with the approvals specified in paragraph 7, above. In written statements to EPA and to its customers (the generators), Respondent Rose has expressed its unwillingness and inability to properly dispose of PCBs and PCB items at the Holden facility unless the generators of the said materials provide additional financial assistance.

16. Respondent Rose's facility is located within the city limits of Holden, Missouri, and is located immediately adjacent to other active business entities, and immediately adjacent to residential areas on two sides, and an agricultural area on the other side. Although the Holden facility has a barbed wire fence with a gate, access to the Holden facility has been observed to be unrestricted.

17. On or about May 13, 1986, and continuing thereafter, a release of PCB contaminated oil from a parked tanker truck occurred at the Holden facility. The released material ran into a holding pond for the Holden facility tank farm and into a storm sewer manhole, which empties from an outfall into a tributary of the East Branch of Pin Oak Creek. Oil residue was observed for approximately 1000 yards from the outfall to where the tributary empties into the East Branch of Pin Oak Creek. In addition, oil sheens were observed at

various points within the tributary and in the East Branch of Pin Oak Creek near the Holden wastewater treatment plant. Analytical results from oil and sediment samples taken from the said branch revealed PCBs in concentrations of 2.1 to 90 ppm.

18. Based on the apparent continuing violations of 40 C.F.R. Part 761, on the proximity of the Holden facility to residential areas, on the apparent non-restricted access to the Holden facility, and on the past release(s) of PCBs into the environment, there exists a threat of release of PCBs into the environment due to fire, vandalism, inadvertent or deliberate spillage of PCBs, or other acts.

CONCLUSIONS OF LAW

1. Respondent Rose, Respondent ETI, Respondent American, Respondent Carolan Company, Respondent Carolan, Respondent Holden, and Respondent Lear Siegler are each a "person" as defined by Section 101(21) of CERCLA, 42 U.S.C. §9601(21).
2. PCBs are "hazardous substances" as defined by Section 101(14) of CERCLA, 42 U.S.C. §9601(14).
3. The real property and buildings located at 500 W. McKissock, Holden, Missouri, and each and every other location wherein PCBs are located are each separately and/or together a "facility" as defined by Section 101(9) of CERCLA, 42 U.S.C. §9601(9).

4. Any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping or disposing into the environment which has occurred or which may occur constitutes a "release" as defined by Section 101(22) of CERCLA, 42 U.S.C. §9601(22).

DETERMINATION

Based on the foregoing Findings of Fact and Conclusions of Law, the undersigned has determined that there may be an imminent and substantial endangerment to the public health or welfare or the environment because of the actual or threatened release of a hazardous substance from the facility(s). It has been further determined that in order to protect public health and welfare and the environment, it is necessary that the response actions, set forth in the following Order be undertaken. The response actions required by the terms of this Order are consistent with the National Contingency Plan, 40 C.F.R. Part 300, and will prevent or mitigate immediate and significant risk of harm to human life or health and to the environment.

ORDER

Immediate Response Action

IT IS HEREBY ORDERED AND DIRECTED THAT:

1. Respondent Rose and Respondent ETI, their agents, representatives, employees and consultants shall, immediately upon receipt of this Order, take the following

actions to address immediate threats to human health or welfare or the environment.

(a) With respect to the PCB oil spill referred to in paragraph 17 of the Findings of Fact:

(1) remove and containerize all free-flowing oils resulting from the said spill;

(2) excavate and containerize all contaminated soils, tributary and creek sediments, and other materials resulting from the said spill;

(3) dispose of, in accordance with 40 C.F.R. §761.60, all PCB contaminated materials containerized as a result of actions taken pursuant to this subparagraph;

(4) collect and analyze samples, subsequent to the required response activities, to insure clean-up of PCB contaminated oil and soils to EPA approved levels.

(b) With respect to the tanker truck which was the source of the spilled PCB materials, referred to in paragraph 17 of the Findings of Fact, drain the said tanker truck into a secure tank truck or other approved container(s) and decontaminate said tanker truck in accordance with 40 C.F.R. §761.79 or dispose of said tanker truck in accordance with 40 C.F.R. §761.60(c).

(c) Locate all tractor, trailer, and tanker trucks and any other unsecured tankage, presently containing PCB contaminated oil at the Holden facility, inside a imperme-

able bermed area of sufficient capacity to contain the total capacity of all tankage so located, with a minimum freeboard of twelve (12) inches. Any trucks, tractors or tanker trucks that were exposed to PCB contamination and that are currently stored offsite shall be stored onsite in accordance with this paragraph.

Initial Response Action

IT IS FURTHER HEREBY ORDERED AND DIRECTED THAT:

2. Unless otherwise specifically required by this Order, Respondent Rose and Respondent ETI, their agents, representatives, employees and consultants are immediately, upon receipt of this Order, prohibited from accepting any PCBs or PCB items for processing, storage, or disposal at its facility in Holden, Missouri, without further specific approval by EPA.

3. Unless otherwise specifically required by this Order, Respondent Rose and Respondent ETI, their agents, representatives, employees and consultants are immediately, upon receipt of this Order, prohibited from disposing of, handling or otherwise removing from its facility, any PCBs or PCB items presently in storage or otherwise located at Respondent Rose's facility in Holden, Missouri, unless such disposal, handling or removal is specifically approved by EPA and performed in the manner specified in the PCB rules and regulations at 40 C.F.R. §761.60 and in accordance with applicable paragraphs 4 through 13, following.

4. Respondent Rose and Respondent ETI, their agents, representatives, employees and consultants shall immediately, upon receipt of this Order, cease all inventory work until such time that the plan for conducting the inventory, specified in paragraph 6, following, is approved or conditionally approved by EPA.

5. Respondent Rose and Respondent ETI, their agents, representatives, employees and consultants shall immediately, upon receipt of this Order, take such measures as necessary to restrict access and provide security to the property upon which Respondent Rose's facility operates. Such restrictions on access and providing security shall include the following:

(a) establishment of twenty-four (24) hour security onsite with the presence of trained security personnel at all times;

(b) the posting of warning signs adequate to warn the public of the presence of PCBs and other hazardous wastes, if any;

(c) establishment of EPA approved warning and notification systems adequate to immediately warn local, state and federal authorities of any fire, spill or other release at the Holden facility; and

(d) construction of a complete EPA approved chain link security fence surrounding the Holden facility to prevent access to unauthorized personnel.

Final Response Action

IT IS FURTHER ORDERED AND DIRECTED THAT:

6. Respondents Rose, ETI, American, Carolan Company and Carolan shall, within ten (10) working days of receipt of this Order, submit to EPA a detailed plan both for conducting an inventory of all PCBs and PCB items presently located at the Holden facility and for removal of all PCBs and PCB items from the Holden facility. Said inventory/disposal plan shall at a minimum:

(a) provide for, with respect to the inventory, identification of each PCB container and, for each PCB container, identification of each generator whose PCBs or PCB items are contained therein and the quantity and PCB concentration of material from each such generator;

(b) provide for the disposal of all PCBs, including all contaminated soils and sediments, and PCB items in accordance with the applicable provisions of 40 C.F.R. §§761.60(a), 761.60(d), and 761.60(e);

(c) provide for a sampling and analysis program whereby the extent and magnitude of any contamination of soils, sediments, surface or subsurface waters, or other portions of the environment, resulting from the release [as defined by 42 U.S.C. §9601(22)] of PCBs or other hazardous substances at or from the facility, will be determined;

(d) provide, for all PCBs and PCB items disposed of pursuant to this Order, for the development and maintenance of records which shall include the information set forth in 40 C.F.R. §761.180(b)(1) through (4) and required by condition #10 of the aforementioned approvals to process PCB capacitors and PCB transformers for disposal (such records shall immediately be made available to EPA upon request);

(e) provide for the performance of all actions under the terms of this Order in accordance with all applicable EPA standards and procedures, including but not limited to sample and analytical procedures, personnel protection standards, decontamination procedures and site safety guidelines; and

(f) provide a schedule for the implementation of all elements of the inventory/disposal plan.

7. Respondents Rose, ETI, American, Carolan Company, and Carolan shall, within thirty (30) calendar days of receipt of EPA's approval or conditional approval of the inventory plan described in paragraph 6 of this Order, complete the said inventory and submit a report of said inventory to EPA.

8. Respondents Holden and Lear Siegler shall provide all access to the aforementioned property necessary for Respondent Rose, ETI, American, Carolan Company and Carolan to implement the terms of this Order. Such access shall also be provided to EPA and the State of Missouri and their authorized representatives.

9. Respondents Rose, ETI, American, Carolan Company and Carolan shall, by 5:00 p.m. on May 30, 1986, provide telephonic and written notification to J. Scott Pemberton, Assistant Regional Counsel, Office of Regional Counsel, 726 Minnesota Avenue, Kansas City, Kansas 66101, (913) 236-2809, as to what actions said Respondent intends to undertake pursuant to the terms of paragraphs 2 through 13 of this Order.

10. Respondents shall retain all records concerning or related to the response actions taken pursuant to this Order for a period of time not less than seven (7) years after completion of all activities specified in the approved plan. Such records include, but are not limited to results of sampling analyses, chain-of-custody records, manifests, trucking logs, receipts, reports, records pertaining to the destination of the hazardous substances, correspondence and any other documents related to the response actions undertaken pursuant to this Order.

11. All response actions undertaken pursuant to this Order and the approved plan or conditionally approved plan shall be performed by Respondent as may be directed by the EPA on-scene coordinator (OSC) or his designee pursuant to the OSC's authority as set forth in of 40 C.F.R. Part 300. If at any time the EPA OSC determines that any of the response

actions are not being performed in accordance with EPA guidelines, standards, regulations or good engineering practice, he shall have the authority to: (1) require Respondents to perform any particular response action in accordance with his instructions as may be necessary to avoid or mitigate any real or potential endangerment to the public health, welfare and/or the environment; or (2) undertake any of the response actions required by the terms of this Order.

12. All documents including records and reports, requested or required to be submitted to EPA pursuant to this Order shall be delivered to:

Robert L. Morby
Waste Management Division
U.S. Environmental Protection Agency
Region VII
726 Minnesota Avenue
Kansas City, Kansas 66101

13. All actions undertaken pursuant to this Order by Respondents or their representatives shall be done in accordance with all applicable federal, state, and local laws and regulations.

MISCELLANEOUS

Reservation of Rights

EPA retains the right to determine whether further response actions are necessary at the said facility and to require such further actions pursuant to authority under law, including but not necessarily limited to Section 106 of CERCLA,

42 U.S.C. §9606, Section 7003 of the Resource Conservation and Recovery Act of 1976, as amended (RCRA), and Sections 6(e), 7, 15 and 17 of the Toxic Substances Control Act (TSCA), 15 U.S.C. §2605(e), 2606, 2614 and 2616. Nothing in this Order shall be construed to limit such authority.

Nothing in this Order shall be construed to prevent EPA from seeking legal or equitable relief to enforce the terms of this Order or from taking other actions it deems appropriate or necessary to protect the public health, welfare or environment.

Penalties for Non-Compliance

Respondents are hereby advised that, pursuant to Section 106(b) of CERCLA, 42 U.S.C. §9606(b), any person who willfully violates or fails or refuses to comply with this Order may, in an action brought in the appropriate United States district court to enforce this Order, be fined not more than \$5,000 for each day in which such violation occurs or such failure to comply continues.

Respondents are further advised that, pursuant to Section 107(c)(3) of CERCLA, 42 U.S.C. §9607(c)(3), any person who is liable for a release or threat of release of a hazardous substance and who fails without sufficient cause to properly provide the removal or remedial actions specified in this Order may be liable to the United States for punitive

damages in an amount at least equal to and not more than three times, the amount of any costs incurred by the government as a result of such failure to take proper action.


Opportunity to Confer

By 5:00 p.m. on May 28, 1986, Respondent may request a conference with EPA to discuss the terms and conditions of paragraphs 2 through 13 of the Order. The person to contact will be, during business hours, J. Scott Pemberton, Assistant Regional Counsel, Office of Regional Counsel, at (913) 236-2809.

Effective Date

As to each Respondent, this Order is effective immediately upon receipt of this Order by that Respondent and all times for performance of response actions pursuant to this Order shall be calculated from that time and date.


IT IS SO ORDERED.

for 

Morris Kay
Regional Administrator
U.S. Environmental Protection Agency
Region VII



Date 5/23/86



J. Scott Pemberton
Assistant Regional Counsel
U.S. Environmental Protection Agency
Region VII